

**Hutsell Transfer, Inc. and Teamsters Union Local 483, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.** Cases 19-CA-11457 and 19-CA-11576

August 31, 1981

# SUPPLEMENTAL DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND  
ZIMMERMAN

On July 9, 1980, the National Labor Relations Board issued an Order<sup>1</sup> in the above-entitled proceeding, in which the Board, *inter alia*, ordered the Respondent to make whole Steven D. Bates for any loss of earnings he may have suffered as a result of the Respondent's discrimination against him. A controversy having arisen over the amount of backpay due under the Board's Order, the Regional Director for Region 19, on March 24, 1981, issued and duly served on the Respondent a backpay specification and notice of hearing, alleging the amount of backpay due the discriminatee under the Board's Order and notifying the Respondent that it must file a timely answer which must comply with the National Labor Relations Board Rules and Regulations, Series 8, as amended. The Respondent failed to file such an answer.

Thereafter, on May 11, 1981, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, on May 15, 1981, the board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent failed to file a response to the Notice To Show Cause.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

## Ruling on the Motion for Summary Judgment

Section 102.54 of the Board's Rules and Regulations, Series 8, as amended, provides, in pertinent part, as follows:

(a) . . . The respondent shall, within 15 days from the service of the specification, if any, file an answer thereto . . . .

\* \* \* \* \*

<sup>1</sup> Not published in volumes of Board Decisions.

(c) . . . If the respondent fails to file an answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without notice to the respondent, find the specification to be true and enter such order as may be appropriate.

The backpay specification, issued and served on the Respondent on March 24, 1981, specifically states that the Respondent shall, within 15 days from the date of the specification, file with the Regional Director for Region 19 an answer to the specification and that, if the answer fails to deny the allegations of the specification in the manner required under the Board's Rules and Regulations and the failure to do so is not adequately explained, such allegations shall be deemed to be admitted to be true and the Respondent shall be precluded from introducing any evidence controverting them.

The Respondent has filed no answer and informed the Regional Office on April 29, 1981, that it did not intend to file an answer. The Respondent also failed to file a response to the Notice To Show Cause and, therefore, the allegations of the Motion for Summary Judgment stand uncontroverted. As the Respondent has not filed an answer to the specification and has not offered any explanation for its failure to do so, in accordance with the rules set forth above, the allegations of the specification are deemed to be admitted as true and so found by the Board without the taking of evidence in support of said allegations.

Accordingly, on the basis of the allegations of the specification which are accepted as true, the Board finds the facts as set forth therein, concludes that the net backpay due the discriminatee, Steven D. Bates, is as stated in the computations of the specification, and orders the payment thereof by the Respondent to the discriminatee.

## ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Hutsell Transfer, Inc., Boise, Idaho, its officers, agents, successors, and assigns, shall make whole the discriminatee named below by paying him the amount set forth adjacent to his name:

Steven D. Bates    \$ 2,380.63

This sum shall accrue interest to be computed in the manner prescribed in *Florida Steel Corporation*, 231 NLRB 651 (1977).<sup>2</sup> There shall be deducted

<sup>2</sup> See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962). In accordance with his partial dissent in *Olympic Medical Corporation*, 250

*Continued*

from the above amount social security taxes and income tax withholdings as required by Federal and state law.

NLRB 146 (1980), Member Jenkins would award interest on the backpay due based on the formula set forth therein.